Supreme Court, U.S.
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No. 94-655

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1994

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, and EAST COAST INTERMODAL SYSTEMS, INC., a/k/a E.C.I.S., INC.,

Petitioners,

v.

EMPIRE FIRE & MARINE INSURANCE COMPANY, and LUIS CARBONELL,

Respondents.

On Petition for a Writ of Certiorari to the Florida District Court of Appeals, Third District

RESPONDENT'S BRIEF IN OPPOSITION

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HOPP

QUESTIONS PRESENTED

1. Whether there is jurisdiction pursuant to *28 U.S.C. §1257*; and if so,

2. Whether the determination of priorities of insurance coverage was based on an illegal application of ICC Regulations and/or federal law?

RULE 29.1 LISTING

The Respondent, **EMPIRE FIRE & MARINE INSURANCE COMPANY**, amends the Rule 29.1 Listing in Petitioners' Brief and states:

Zurich Insurance Co. of Zurich Switzerland owns 100% of Zurich Holding Co. of America which owns 100% of american Guarantee & Liability Ins. Co., a New York corporation, which owns 100% of **EMPIRE FIRE & MARINE INSURANCE COMPANY.**

EMPIRE FIRE & MARINE INSURANCE COMPANY owns 100% of Empire Indemnity Ins. Co., an Oklahoma corporation; 100% of Douglas Street Premium Finance Co. of California; 100% of Douglas Street Premium Finance Co., a Nebraska corporation; 51% of Truckwriters, Inc, a Nebraska corporation; and 51% of Williams & Strazzone Ins. Agency, a Nebraska corporation.

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No. 94-655

IN THE

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THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, and EAST COAST INTERMODAL SYSTEMS, INC., a/k/a E.C.I.S., INC.,

Petitioners,

v.

EMPIRE FIRE & MARINE INSURANCE COMPANY, and LUIS CARBONELL,

Respondents.

On Petition for a Writ of Certiorari to the Florida District Court of Appeals Third District

RESPONDENT'S BRIEF IN OPPOSITION

OPINION BELOW

This appeal is from the decision of the Third District Court of Appeals for the State

of Florida in *Empire Fire & Marine Ins. Co. v. The Insurance Co. of the State of Penn., and East Coast Intermodal Sys., Inc., a/k/a E.C.I.S., Inc.*, 638 So.2d 102 (Fla. 3rd DCA 1994) (App.1-13) and the order of the appellate court denying Petitioners' Motion for Rehearing and Rehearing En Banc (App.14-15).

JURISDICTION

The Order of the Appellate Court denying Petitioners' Motion for Rehearing is dated July 12, 1994. (App.14-15). The Petition for Writ of Certiorari was filed on October 8, 1994. The jurisdiction of this Court is erroneously evoked pursuant to *28 U.S.C. §1257*.

STATEMENT

The Respondent objects to the Petitioners' Statement of the Case in the following instances:

1. The Third District Court of Appeal

determined that the pursuant to ICC regulations **and** the provisions of the actual insurance policies, Petitioner, under Florida law, owed primary coverage to the insured vehicle. The appellate court of Florida did not use the mandatory provisions of the ICC regulations solely in determining priorities between insurance coverages and did not "eviscerate" the holding in *Brada Miller*. The Florida court determined that the language of the Petitioners' policy was in conformity with the required I.C.C. regulations and required full coverage in the absence of "other insurance". There was no "other insurance". There was excess insurance. Respondent was not a party to the Petitioners' policy nor a party to the agreement between the lessee and lessor requiring bobtail coverage. The separate bobtail insurance provided by Respondent's policy only provided excess coverage by its terms.

2. The Florida Third District Court of Appeal was not the court of last resort.

ARGUMENT

I.

THERE IS NO JURISDICTION PURSUANT TO 28 U.S.C. §1257.

A review on writ of certiorari is not a matter of right, but of judicial discretion. *28 U.S.C. §1257* provides for certiorari so that

> Final judgments or decrees rendered by the highest court of a State in which a decision *could be had*, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States. [emphasis added]

In the instant matter, the Florida

Supreme Court, the highest court in Florida, was never given an opportunity to determine the issue. The Petitioners' merely filed a Motion for Rehearing and Rehearing En Banc (App.16-22) and did not request Supreme Court Certification and provided by the Florida Constitution and *Rule 9.330 (a) and (b), Florida Rules of Appellate Procedure*. (App.23)

Pursuant to *Article V, Section 3(b)(3) and (4), The Florida Constitution*, the Supreme Court possesses **discretionary** jurisdiction to review decisions of district courts of appeal:

a. that expressly affect a class of constitutional or state officers;

b. that expressly and directly conflict with a decision of another district court of appeal or the supreme court;

c. that expressly construe a provision of the state or federal constitution;

d. that expressly declare valid a state statute; or

e. that the district court certifies to be of great public importance or in direct conflict with a decision of another district court of appeal.

Thus, a review of the Third District Court of Appeal decision in this cause ***could have been had*** *by the Florida Supreme Court* had the Petitioners properly sought certification of a question of "great importance" as alleged in the Petitioners' Brief. The Florida Supreme Court has never been given the opportunity to exercise its discretionary jurisdiction so the opinion as mandated by the Third District Court of Appeal is not final nor was the opinion rendered by the court of last resort as alleged by the Petitioners.

II.

THE FLORIDA COURT'S DETERMINATION OF PRIORITIES OF COVERAGE BETWEEN INSURANCE CARRIERS INVOLVED IN INTERSTATE COMMERCE DOES NOT VIOLATE FEDERAL LAW NOR IMPACT ADVERSELY ON INTERSTATE COMMERCE AND ICC REGULATIONS.

Petitioners' argument is centered around their interpretation of the Third District Court's mandate. According to Petitioners, "the Florida appellate court wrongly held that ICC regulations, which were solely intended to protect the public, also protect the Lessor's insurer." (Initial Brief, page 6).

The appellate decision, after considering the various federal cases, considered the "interplay of the applicable I.C.C. regulations, the terms of the insurance contracts", and then reviewed the actual language of the two policies. (App.1-13)

The court determined that:

> The truck-tractor in this case had been hired from the owne[r] by the I.C.C. carrier. The I.C.C. carrier's policy provides

> primary coverage. *Under the terms of the bobtail policy, the bobtail policy's coverage is excess.* [emphasis added] (App.12)

The Respondent concurs that state law and private agreements between carries are not affected by the ICC regulations. *Travelers Ins. Co. v. Transport Ins. Co.*, 787 F.2d 1133 (7th Cir. 1986). In this case, there was no agreement between the insurance carriers. The lessee of the tractor-trailer purchased one policy (Petitioners' policy) and the lessor purchased a second policy (Respondent's policy).

The fact that the bobtail policy purchased by the lessor did not conform to the intent of the lease agreement entered into between the lessee and lessor is of no matter to the Respondent.

The decision of the Florida appellate court did not change nor conflict with the decision in *Transamerican Freight Lines, Inc. v. Brada Miller Freight Sys., Inc.*, 423 U.S. 28 (1975).

The Petitioners' misconstrue the appellate court's determination that the primary coverage was determined by the appellate court because the ICC regulations required that the lessee be primarily responsible for the control and maintenance of the vehicle. The appellate court first determined that since there was no definitive definition of "bobtailing" in the Petitioners' insurance policy nor in the lease agreement, the fact that the lessor was responsible for the maintenance of the truck, did not indicate that the taking of the truck for an oil change was "bobtailing". The appellate court used the common understanding and definition of bobtailing and determined that the truck was not being used in such a situation. Under this reasoning, the court determined that primary responsibility for the accident was with the Petitioner. (App.8-10)

In *Brada Miller* this court determined that

indemnity agreements between lessees and lessors did not conflict with ICC regulations. Nothing in the appellate decision under review contradicts this statement. In fact, Florida law does recognize the right to shift the burden of insurance coverage between ICC insurance carriers. *Canal Ins. Company v. Hartford Insurance Company*, 415 So.2d 1295 (Fla. 1st DCA 1982); *State Automobile Mutual Insurance Co., v. Ryder Truck Rental, Inc.*, 627 So.2d 1326 (Fla. 3rd DCA 1993).

Regardless of the court's interpretation of bobtailing, the appellate court found, as was the situation in the *Canal* case, that Respondent's policy specifically did not extend primary coverage to the lessee in this case. (App.11-12)

Since the Respondent was not a party to the lease agreement between the lessee and lessor, and since the Respondent's policy specifically excluded primary coverage for this accident, the appellate decision is in

accord with Florida insurance law and does not in any instant violate federal ICC regulations or federal law.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE DISTRICT COURT
OF APPEAL OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D.
1994

EMPIRE FIRE AND MARINE INSURANCE COMPANY,

Appellant/
Cross-appellee,

vs.

THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, AND EAST COAST INTERMODAL SYSTEMS, INC., a/k/a/ E.C.I.S., INC.

Appellees/
Cross-appellants,

and LUIS CARBONELL and ROBERT L. LeCOUNT,

Appellees.

CASE NOS. 93-2183, 93-1315

Opinion filed May 24, 1994.

Appeals from the Circuit Court for Dade County, Philip Bloom, Judge.

Rhea P. Grossman, for appellant/cross-appellee.

Marlow, Connell, Valerius, Abrams, Lowe & Adler and James Hughes Villacorta and William G. Liston, for appellees/cross-appellants; Sperry, Shapiro & Kashi and Joseph S. Kashi (Ft. Lauderdale), for appellee Carbonell.

Before NESBITT, COPE and GERSTEN, JJ.

COPE, Judge.

Empire Fire & Marine Insurance Co. appeals final judgments in a declaratory judgment action to determine the priority of insurance coverage. We affirm in part and reverse in part.

Appellee Luis Carbonell is the owner of a truck-tractor. The owner entered into a lease with appellee East Coast Intermodal Systems, Inc., a carrier operating under an Interstate Commerce permit ("the I.C.C. carrier"). The lease was what is referred to in the industry as a permanent lease. See Whales Trnsp., Inc. v. Interstate Commerce Comm'n, 728 F.2d 774, 777 (5th Cir. 1984); see generally 4 Saul Sorkin, Goods in Transit, §45.03 (1994) (discussing early and modern day permanent

leases).

Under I.C.C. regulations:

> Exclusive possession and responsibilities--(1) The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease.

49 C.F.R. § 1057.12(c).

Under the terms of the lease, the owner-lessor not only leased the truck-tractor to the I.C.C. carrier, but also contracted to provide a driver for the tractor. Under the lease, the owner was also required to handle all repair and maintenance at the owner's expense.

Under the lease and under I.C.C. regulations, the I.C.C. carrier is required "to maintain insurance coverage for the protection of the pubic pursuant to Commission regulations under 49 U.S.C. [§] 10927. The

lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance." 49 C.F.R. § 1057.12(j).

The I.C.C. carrier was insured by appellee The Insurance Company of the State of Pennsylvania ("the truckers' policy"). Under the lease, the owner was responsible for providing bobtail coverage. "Bob-tail/deadhead insurance is a term generally used to describe 'non-trucking use insurance." It is intended to cover the insured when the vehicle is not under load, when it is being serviced, or when it is being used for some other non-revenue purpose." 4 Saul Sorkin, Goods in Transit § 45.01(1), at 45-4 to 45-5 (footnotes omitted). Appellant Empire Fire & Marine Insurance Co. issued a policy to the owner which provided truckers' insurance for non-trucking use ("the bobtail policy").

In June, 1988, while the lease was i

effect, there was an accident between the truck-tractor and another motorist, appellee Robert L. LeCount. the owner was driving the truck-tractor at the time of the accident. The tractor was "bobtailing," that is, traveling without a truck-trailer attached to it. The owner was on the way to obtain an oil change for the truck, after which he was to proceed to pick up a load for the I.C.C. carrier. Pursuant to the lease, the truck-tractor was carrying the I.C.C. carrier's placard and operating under the I.C.C. permit at the time of the accident.

LeCount filed a lawsuit for damages arising out of the accident. The tort lawsuit has been resolved and LeCount has been paid.

The truckers' insurer (The Insurance Company of the State of Pennsylvania) and the bobtail insurer (Empire Fire & Marine Insurance Co.) both agreed that their insurance policies provided coverage for the

accident. However, the insurers could not agree on the priority of coverage. Accordingly, the bobtail insurer brought a declaratory judgment action. The trial court ruled that the two policies would provide pro rata coverage. The trial court also awarded attorney's fees to the owner, against the bobtail insurer, pursuant to section 627.428, Florida Statutes. The bobtail insurer has appealed. The Insurance Company of the State of Pennsylvania and East Coast Intermodal, Inc. cross-appeal the trial court's pro rata coverage determination, arguing that the bobtail coverage should be primary and the truckers' policy should be excess.

Courts through the United States are divided in their approach to insurance coverage issues where trucking equipment is leased to an I.C.C. carrier. See generally 4 Saul Sorkin, Goods in Transit, chap. 45; Empire Fire & Marine Ins. Co. v. Guaranty

Nat'l Ins. Co., 868 F.2d 357 (10th Cir. 1989). The difficulty arises from the interplay of the applicable I.C.C. regulations, the terms of the lease agreements, and the terms of the insurance contracts. See generally Empire Fire & Marine Ins. Co., 868 F.2d at 361 (The decisional law haws "interpreted the effect of [the] ICC endorsement in at least three ways . . . [each] compel[ing] dramatically different results, yet each [having] jurisprudential support.")

For present purposes we begin by examining the other insurance clauses of the respective insurance contracts. 'the truckers' policy provides, in part:

> 1. This policy's liability coverage is primary for any covered **auto** which hired or borrowed by **you** and used exclusively in **your** business and pursuant to operating rights granted to you by a public authority. . . .
>
> . . .
>
> 3. Except as provided in Paragraphs 1 and 2 above this policy

> provides primary insurance for any covered **auto you** own and excess insurance for any covered **auto you** don't own.
>
> 4. When two or more policies cover on the same basis, either excess or primary, **we** will pay only **our** share. **Our** share is the proportion that the limit of **our** policy bears to the total of the limits of all the policies covering on the same basis.

In our view, the first-quoted sentence is the one applicable here. The truck-tractor in this case had been hired by the I.C.C. carrier pursuant to the lease agreement. Under the applicable I.C.C. regulations, any such lease agreement must "provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease." 49 C.F.R. § 1057.12(c)(1). The leased vehicle

was thus, pursuant to the regulations, leased for the exclusive use of the I.C.C. carrier in its business and pursuant to the operating rights granted to the I.C.C. carrier by the public authority, namely, the I.C.C.

The I.C.C. carrier argues that the truck-tractor was not being used for the I.C.C. carrier's business because the tractor was on the way to an oil change. Since under the lease the owner was responsible for carrying out the maintenance functions at the owner's expense, the I.C.C. carrier argues that the trip to obtain an oil change takes the matter out of the first sentence of the "other insurance" clause. We disagree.

One of the reasons for the adoption of I.C.C. regulation over the use of leased equipment was to make sure that leased equipment was being properly maintained. See 4 Saul Sorkin, Goods in Transit § 45.02-.03; Transamerican Freight Lines, Inc. v. Brada

Miller Freight Sys., Inc., 423 U.S. 28, 36-41, 96 S.Ct. 229, 233-36, 46 L.Ed. 2d 169 (175); Empire Fire & Marine Ins. Co., 868 F.2d at 360-63. The oil change is a maintenance function which is a part of the trucker's business, just as it would be if the truck-tractor had been owned by the I.C.C. carrier. See Hartford Ins. Co. v. Occidental 'fire & Casualty Co., 908 F.2d 235 (7th Cir. 1990) (Driver of tractor was using truck "in the business of" carrier lessee where injury occurred while driver was e route to pick up trailer which had been repaired); St. Paul Fire & Marine Ins. Co. v. Frankart, 370 N.E. 2d 1058 (Ill. 1977) (tractor trailer used in business of common carrier at time of accident where driver was returning home from delivering cargo and made short diversion to obtain fuel at a cheaper price). Moreover, maintenance is necessary for the tractor's continued operation in the I.C.C. carrier';s

business. Accordingly we agree with the trial court that the truckers' policy provides primary coverage in this case.

We part company with the trial court, however, on its conclusion that the bobtail policy also provides primary coverage. The bobtail policy provides, in part:

> 1. This policy's liability coverage is primary for any covered auto while hired or borrowed by you and used exclusively in **your** business and over a route or territory, if any, **you** are authorized to serve by public authority. This policy's liability coverage is **excess** over any other collectible insurance for any covered **auto** while hired or borrowed from **you** by another trucker. ...
>
> 2. Except as provided in Paragraph 1 above, this policy provides primary insurance for any covered **auto you** own and **excess insurance for any covered** auto **you** don't own.
>
> 3. When two or more policies cover on the same basis, either excess or primary, **we** will pay only **our share**. **Our share** is the proportion that the limit of **our** policy **bears** to the total of the limits of all the policies covering on the same basis.

The first quoted sentence does not apply to the owner in this case, but the second sentence does. The truck-tractor in this case had been hired from the owner by the I.C.C. carrier. The I.C.C. carrier's policy provides primary coverage. Under the terms of the bobtail policy, the bobtail policy's coverage is excess.

The trial court had concluded that both policies provided primary coverage and that the two policies would be required to prorate. We agree with the trial court that the truckers' policy is primary, but conclude that the bobtail policy provides excess coverage in this case. We therefore reverse the declaratory judgment in part and remand with directions to enter judgment in accordance with this opinion.

As to the award of attorney's fees to the owner, the appellant concedes that the award is correct. The attorney's fee order in favor

of appellee Carbonell is therefore affirmed in its entirety.

Affirmed in part, reversed in part, and remanded for proceedings consistent herewith.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1994

JULY 12, 1994

EMPIRE FIRE & MARINE INSURANCE CO.,	**	CASE NO.
Appellant(s),	**	93-02183
	**	93-01315
vs.		
	**	LOWER
LUIS CARBONELL, et al.,		TRIBUNAL NO.
	**	91-25810
Appellee(s).		

Upon consideration, appellee The Insurance Company of Pennsylvania's motion for rehearing is hereby denied. Nesbitt, Cope and Gersten, JJ., concur. The Insurance Company of Pennsylvania's motion for rehearing en banc is hereby denied.

A True Copy

ATTEST:

LOUIS J. SPALLONE

Clerk District Court of
Appeal, Third District

BY: /s/ Mary C. Blanks
Chief Deputy Clerk

cc: Rhea P. Grossman James I. Knudson
Joseph S. Kashi George V. Lanza
William G. Liston
/NB

IN THE DISTRICT COURT OF APPEAL
STATE OF FLORIDA
THIRD DISTRICT

CASE NOS. 93-1315
and 93-2183
(CONSOLIDATED)

Florida Bar No. 332542

EMPIRE FIRE & MARINE INSURANCE COMPANY,

Appellant,

vs.

LUIS CARBONELL, EAST COAST INTERMODEL SYSTEMS, INC., a/k/a E.C.I.S., INC., THE INSURANCE COMPANY OF PENNSYLVANIA and ROBERT L. LeCOUNT,

Appellees.

MOTION FOR REHEARING AND REHEARING EN BANC

Motion for Rehearing

Appellee, The Insurance Company of Pennsylvania, pursuant to Florida Rule of Appellate Procedure 9.330, moves this court for rehearing in the above-styled cause and as grounds therefor the Appellee submits the

following:

In this case, this court held that a lessor and lessee could not, by private agreement, allocate the risk of loss between themselves.

The decision is based upon an interpretation of 49 C.F.R. 1057(12)(c), which requires the lessee to assume all responsibility for operation of the equipment during the term of the lease. Thus, this court found that in spite of a lease clause shifting responsibility between the parties to the lessor, that the lessee was primarily liable for an accident which occurred while the lessor was bobtailing.

In reaching its opinion, this court either overlooked or misinterpreted **Transamerica Freight Lines, Inc. v. Brada Miller Freight Systems, Inc.**, 423 U.S. 28, 96 S.Ct. 229, 46 L.Ed.2d 169 (1975). In **Brada Miller**, the Court held that an indemnification

clause in a lease between a lessor and a lessee shifting ultimate responsibility for risk, solely between those parties, was not contrary to then 49 C.F.R. 1057.3(a) which placed responsibility for "control and responsibility for the operation of the equipment" upon the lessee.

The United States Supreme Court found that an indemnification agreement violated the Interstate Commerce Commission regulations only if the lessor was in control of the services provided as well as the physical operation of the vehicle. The Court found no conflict between the regulation and the indemnification clause because the indemnification clause did not infringe upon the requirements of the regulations that ultimate responsibility to shippers and third parties remain in the lessee.

Here, it is submitted that the lease clause regarding bobtail insurance as well as

shifting maintenance responsibility, between the parties but not as to liability third parties, fully complies with the regulations, and that here, between ECIS and Carbonell, that agreement should be enforced. That this is not in violation of the ICC regulations is fully supported by 49 C.F.R. section 1057.12(j) specifically provides that lessors and lessees may allocate the responsibility for bobtail insurance.

The fact that the ultimate responsibility for maintenance is required by the regulations to be in the lessee does not mean that, between the parties, the allocation of that responsibility could not be given to the lessor, any more that the parties in **Brada Miller** could not shift responsibility for all negligence through an indemnification agreement.

Motion for Rehearing En Banc

Appellee, The Insurance Company of

Pennsylvania, moves this court, pursuant to Florida Rule of Appellate Procedure 9.331, for a rehearing en banc in this cause, as and grounds therefor states:

For the reasons expressed in ISOP's motion for rehearing, *supra*, and because this court's opinion in this case disagrees with the four United States Courts of Appeal [1/] that have addressed the issue, on a matter of federal law, it is submitted that the panel decision is of exceptional importance.

I express a belief, based on a reasoned

[1/] **Empire Fire & Marine Ins Co. v, Guaranty National Ins. Co.**, 868 F.2d 357 (10th Cir. 1989); **Carolina Casualty Ins. Co. v. Underwriters Ins. Co.**, 569 F.2d 304 (5th Cir. 1978); **Empire Indem. Ins. Co. v. Carolina Casualty Ins. Co.**, 838 F.2d 1428, 1433 (5th Cir. 1988); **Canal Ins. Co. v. First Gen. Ins. Co.**, 889 F.2d 604 (5th Cir. 1989); **Carolina Casualty Ins. Co. v. Ins. Co. of North America**, 595 F.2d 128 (3rd Cir. 1979); **Travelers Ins. Co. v. Transport Ins. Co.**, 787 F.2d 1133 (7th Cir. 1986); **Occidental Fire & Casualty Co. of North Carolina v. International Ins. Co.**, 804 F.2d 983 (7th Cir. 1986).

and studied professional judgment, that the panel decision is of exceptional importance.

William G. Liston

Respectfully submitted,

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By: /s/ William G. Liston
William G. Liston

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 8th day of June, 1994, to: Rhea P. Grossman, Esquire, Rhea P. Grossman, P.A., 2710 Douglas Road, Miami, Florida 33133-2728, attorney for Appellant; James I. Knudson, Esquire, 1824 S. Fiske Boulevard, Rockledge, Florida 32955,

attorney for LeCount; Joseph S. Kashi, Esquire, Sperry, Shawpiro & Kashi, P.A., 633 South Andrews Avenue, #101, Fort Lauderdale, Florida 33301, attorney for Carbonell; and George V. Lanza, Esquire, 3300 Ponce de Leon Boulevard, Coral Gables, Florida 33134, attorney for Empire Fire & Marine Ins. Co.

_____
William G. Liston

RULE 9.330 REHEARING; CLARIFICATION; CERTIFICATION

(a) Time for Filing; Contents, Reply. A motion for rehearing, clarification, or certification may be filed within 15 days of an order or within such other time set by the court. A motion for rehearing or clarification shall state with particularity the points of law or fact that the court has overlooked or misapprehended. The motion shall not re-argue the merits of the court's order. A reply may be served within 10 days of service of the motion.

(b) Limitation. A party shall not file more than 1 motion for rehearing or for clarification of decision and 1 motion for certification with respect to a particular decision.